

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREAT AMERICAN INSURANCE CO., ) Case No. 12-cv-00833-SC  
and GREAT AMERICAN INSURANCE CO. )  
OF NEW YORK, ) ORDER ON MOTION FOR INDICATIVE  
Plaintiffs, ) RULING  
v. )  
MICHAEL CHANG and ROXANNE CHANG, )  
Defendants. )

**I. INTRODUCTION**

Now before the Court is plaintiffs Great American Insurance Company and Great American Insurance Company of New York's (collectively "Great American") motion for an indicative ruling on a motion to enforce the parties' settlement agreement. The motion is fully briefed<sup>1</sup> and suitable for decision without oral argument, per Civil Local Rule 7-1(b). For the reasons set forth below, the Court GRANTS Plaintiffs' motion.

<sup>1</sup> ECF Nos. 99 ("Mot."), 107 ("Opp'n"), 109 ("Reply").

1 Defendants' opposition to the motion was due on May 13. On  
2 May 14, Plaintiffs filed a notice of Defendants' failure to respond  
3 to the motion. ECF No. 106. Defendants filed their opposition a  
4 week later, on May 21. Defendants give no explanation for their  
5 tardiness. They had two weeks from the date the motion was filed  
6 to respond. Plaintiffs filed their notice only a day after that  
7 deadline passed, but Defendants still took another week to file  
8 their opposition. Even with the extra time, Defendants filed only  
9 a short document explaining that they attached, as their opposition  
10 to Plaintiffs' motion, an opposition to a motion to enforce the  
11 same settlement in a related case in San Mateo Superior Court. The  
12 Changs have previously violated the Civil Local Rules. On that  
13 occasion, the Court instructed the Changs to comply with the Civil  
14 Local Rules and warned that future violations might carry  
15 consequences. ECF No. 77 ("SJ Order") at 2 n.1. Accordingly, the  
16 Court will disregard Defendants' opposition and treat Plaintiffs'  
17 motion as unopposed.

18 The Changs have also filed a document purporting to be a sur-  
19 reply. ECF No. 112. Their filing does not specify any reason that  
20 a sur-reply is necessary or appropriate. Once more, the Changs  
21 merely attach a sur-reply they filed in the proceedings before the  
22 Superior Court. The Court again directs the Changs to the Civil  
23 Local Rules, which prohibit additional filings after a reply has  
24 been filed without Court approval (there are narrow exceptions that  
25 do not apply here). Civ. L. R. 7-3(d). Great American has  
26 objected to the filing and moved to strike it. If the Changs  
27 believed a sur-reply was necessary, they should have moved for the  
28 Court's leave to file one and stated the reasons for it. They did

1 not do so. Thus the Court SUSTAINS Great American's objection and  
2 STRIKES the sur-reply.

3 The Court notes, however, that if it were to consider the sur-  
4 reply, it would not alter the Court's decision. Indeed, the  
5 Changs' notice of their sur-reply asks the Court to postpone ruling  
6 on Great American's motion pending resolution of a motion to  
7 enforce the same settlement agreement in San Mateo County Superior  
8 Court. The Changs argue that the state court's ruling would  
9 "presumably have a controlling effect on Great American's motion."  
10 Id. Great American has submitted and requested judicial notice of  
11 the minute orders on the motion to enforce the settlement in San  
12 Mateo County Superior Court. ECF No. 116. The Court GRANTS Great  
13 American's request, as the facts for which it requests judicial  
14 notice can be readily determined from sources whose accuracy cannot  
15 reasonably be questioned. Additionally, courts may take judicial  
16 notice of matters of record in related court proceedings. See,  
17 e.g., Holder v. Holder, 305 F.3d 854, 866 (9th Cir. 2002). Thus  
18 the Court takes judicial notice of the fact that the motion to  
19 enforce the settlement in San Mateo Superior Court has been  
20 granted. If, as the Changs argue, that ruling has controlling  
21 effect, then Great American's motion should be granted in this  
22 Court as well.

## 23 24 **II. BACKGROUND**

25 This case involves an insurance coverage dispute. Great  
26 American sued for a declaration that they do not owe a duty to  
27 defend or indemnify defendants Michael and Roxanne Chang  
28 (collectively the "Changs") in underlying state court actions

1 regarding the contamination of the Changs' property. SJ Order at  
2 1-2. One year ago, the Court granted partial summary judgment in  
3 favor Great American. SJ Order. The Court entered judgment  
4 against the Changs and in favor of Great American on December 13,  
5 2013. ECF No. 91. The Changs filed a notice of appeal from the  
6 judgment, ECF No. 92, but simultaneously pursued settlement  
7 discussions in this action as well as in two other lawsuits: the  
8 underlying lawsuit (Kartal v. Chang, San Mateo County Superior  
9 Court Case No. CIV 458146) and insurance coverage litigation  
10 against Farmers Insurance Exchange and Truck Insurance Exchange  
11 (collectively "Farmers") (Chang v. Farmers Insurance Exchange, San  
12 Mateo County Superior Court Case No. CIV 489065). Mot. at 3.

13 In January 2014, the San Mateo County Superior Court held a  
14 status conference jointly for the Kartal and Farmers cases. In  
15 attendance were Michael Chang, the other parties to the Kartal  
16 case, Farmers, and Great American. ECF Nos. 102 ("Scher Decl.") ¶¶  
17 5-7; 100 ("Baron Decl.") ¶¶ 4-5. Counsel for Fireman's Fund  
18 Insurance Company ("Fireman's Fund") participated by telephone.  
19 ECF No. 104 ("Plevin Decl.") ¶¶ 6-8. At the settlement conference,  
20 the Changs, Great American, Farmers, and Fireman's Fund agreed to a  
21 settlement that resolved all claims between the Changs and Great  
22 American in this case and the pending appeal. Baron Decl. ¶¶ 6-7;  
23 Scher Decl. ¶¶ 5-9; ECF No. 103 ("Schwartz Decl.") ¶¶ 8-9. On  
24 January 27, Mr. Chang appeared in the Kartal case before the San  
25 Mateo County Superior Court. He was sworn as a witness and  
26 testified that he had agreed to the basic terms of the settlement  
27 and had no questions about it. ECF No. 105 ("RJN I") Ex. 1 at

28 ///

1 6:22-7:12.<sup>2</sup> The parties agreed that the settlement terms would be  
2 expressed in a written document, which would be drafted initially  
3 by Great American's counsel. The Changs' counsel hoped the  
4 settlement document could be formalized quickly because the Changs  
5 needed it to obtain a refinancing loan. Baron Decl. ¶¶ 9-10, Scher  
6 Decl. ¶¶ 11-12; Schwartz Decl. ¶¶ 10-11.

7 On January 31, Great American's counsel sent a draft  
8 settlement document to counsel for the Changs, Farmers, and  
9 Fireman's Fund. Baron Decl. Exs. 2-3. On February 4, 2014, the  
10 Changs' counsel returned a copy of the signature page signed by  
11 both Michael and Roxanne Chang. Baron Decl. Exs. 4-5. The Changs'  
12 counsel followed up with another email on February 12 stating that,  
13 with regard to the Farmers and Great American cases, "The facts are  
14 simple. We met and agreed and settled on January 27, 2014 . . . ."  
15 Baron Decl. Ex. 6. Great American, Farmers, and Fireman's Fund  
16 have all executed the same settlement document signed by the  
17 Changs. Baron Decl. Ex. 7. The version of the document executed  
18 by the parties contained blank spaces for certain details (such as  
19 the policy numbers of the insurance policies at issue). Baron  
20 Decl. Exs. 5, 7. The parties also agreed to make certain changes  
21 to the wording of the settlement agreement, which were proposed by  
22 the Changs' attorney. Baron Decl. ¶ 16. Subsequently, the special  
23 master overseeing the settlement negotiations in San Mateo County  
24 Superior Court informed counsel for Great American that the Changs  
25 stated that they do not agree to the January 27 settlement and that

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26  
27 <sup>2</sup> The Court GRANTS Great American's request for judicial notice  
28 with respect to Exhibit 1 of its request for judicial notice in  
support of its motion, ECF No. 105.

1 they refused to sign the finalized document. Id. ¶ 17.

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3 **III. LEGAL STANDARD**

4 Great American, recognizing that the Court may lack  
5 jurisdiction to enforce the settlement while the Changs' appeal is  
6 pending, moves for an indicative ruling under Federal Rule of Civil  
7 Procedure 62.1. Under Rule 62.1, when a timely motion for relief  
8 is made but the court lacks authority to grant it because an appeal  
9 is pending, the court may do one of three things: (1) defer  
10 consideration of the motion, (2) deny the motion, or (3) state  
11 either that it would grant the motion if the court of appeals were  
12 to remand for that purpose or that the motion raises substantial  
13 issues. Great American requests that the Court state that it would  
14 grant a motion to enforce the settlement, were the Ninth Circuit to  
15 remand for that purpose.

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17 **IV. DISCUSSION**

18 "[I]t is well settled that a court has inherent power to  
19 enforce summarily a settlement agreement involving an action  
20 pending before it." In re Suchy, 786 F.2d 900, 903 (9th Cir.  
21 1985). A district court may enforce a settlement to which the  
22 parties have agreed, if one of them "later refuse[s] to execute a  
23 formal agreement to dismiss the action and failed to file a timely  
24 response to defendant's motion to enforce the settlement  
25 agreement." Henderson v. Yard House Glendale, LLC, 456 F. App'x  
26 701, 702 (9th Cir. 2011). That is precisely the situation we face  
27 here. The Changs agreed -- both of them by signing the draft  
28 settlement, and Michael also by testifying in open court -- to the

1 material terms of the settlement, but they now refuse to execute  
2 the final document. They have also failed to file a timely  
3 response to the motion to enforce the settlement. The Changs do  
4 not dispute their assent to the settlement terms, nor do they  
5 provide any reason that the Court should disregard it. The San  
6 Mateo Superior Court, which they argue controls enforcement of the  
7 settlement, has also decided to enforce it. Because indicating its  
8 willingness to enforce the settlement may help the Ninth Circuit to  
9 streamline, or perhaps dismiss entirely, the Changs' appeal, the  
10 Court finds it appropriate to issue an indicative ruling.

11  
12 **V. CONCLUSION**

13 For the reasons set forth above, Defendant Great American's  
14 motion for an indicative ruling is GRANTED. If the Court of  
15 Appeals were to remand this case for consideration of enforcement  
16 of the settlement, the Court would enforce the settlement to which  
17 the parties have agreed.

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19 IT IS SO ORDERED.

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21 Dated: July 1, 2014



22 UNITED STATES DISTRICT JUDGE  
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